

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ESTATE OF
ROGER D. OWENSBY JR.,

Plaintiff,

Case No. 1:01-cv-769

vs.

CITY OF CINCINNATI, et al.,

Spiegel, J.; Perelman, M.J.

Defendants.

ORDER: (1) VACATING THE ORDER OF JANUARY 9, 2004 (Doc. 81);
(2) DENYING AS MOOT PLAINTIFF'S MOTION FOR AN ORDER TO COMPEL
(Doc. 66); AND (3) GRANTING PLAINTIFF LEAVE TO SUBMIT AN AFFIDAVIT
IN SUPPORT OF HIS REQUEST FOR EXPENSE AND FEES, IF NECESSARY

On January 9, 2004, Magistrate Judge Novotny entered an Order (Doc. 81) addressing Plaintiff's motion to compel responses to its second request for production of documents (Doc. 66). Apparently unaware that Plaintiff had filed a reply (doc. 78) to Defendants' response in opposition to the motion (doc. 75), Judge Novotny ruled that the motion to compel appeared moot. The reply having been brought to the attention of this Court, this Court hereby VACATES the prior Order and addresses the motion to compel anew.

In the motion to compel, Plaintiff alleges that Defendants failed to respond with any written response to a request which was served upon Defendants on September 18, 2003. Plaintiff seeks (1) an order requiring Defendants to provided a written response and (2) an award of reasonable expenses. In their response to the motion, Defendants do not contest their failure to file timely responses, but assert that they fully responded on

December 16, 2003. In the reply, Plaintiff renews the request for an award of expense and further asserts that Defendants have failed to provide timely responses to Plaintiff's Third, Fourth, Fifth, and Sixth requests for documents.

Because Plaintiff does not reassert in its reply that Defendants have failed to respond to the second request for documents, which is all that is the subject of the present motion, this Court finds that the motion for an order to compel is moot. With respect to the request to an award of fees, however, this Court directs the parties to confer in an attempt to amicably conclude this dispute.

The Court being fully advised, **IT IS THEREFORE ORDERED THAT:**

1. The Order entered January 9, 2004 (Doc. 81) is **VACATED**;
2. Plaintiff's motion to compel (Doc. 66) is **DENIED**; however the Court shall further consider Plaintiff's request for an award of fees pursuant to Rule 27(a)(4)(A), Fed. R. Civ. P.
3. If Plaintiff maintains his demand for an award of fees, he shall confer with Defendants in an effort to amicably conclude this matter. If the parties are unable to reach an agreement, Plaintiff shall notify the Court and submit an affidavit in justification of the reasonableness of the fees and expenses requested. Defendants may respond to the request **within ten (10) days** of Plaintiff's filing.

SO ORDERED.

Date: 1/21/04

s/David S. Perelman
David S. Perelman
United States Magistrate Judge